

BOARDS AND COMMISSIONS
Board of Licensure for Massage Therapy
(Amendment)

201 KAR 42:080. Programs of massage therapy instruction.

RELATES TO: KRS 309.352(2), 309.355(1), (3), [~~309.358(4),~~] 309.363(1), 309.3631

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.352(2) requires the board to define licensed health-care professionals for the supervision of massage therapy students in clinical settings. KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364. KRS 309.355(3) requires the board to promulgate administrative regulations on standards of massage therapy educational program curriculum and instructor qualifications. KRS 309.358(1)(f)[~~(4)~~] requires the board to approve massage therapy training programs. KRS 309.363 requires board approval of massage therapy programs of instruction and establishes instructor qualifications. KRS 309.3631 requires the annual renewal of certificates of good standing, documentation of program updates, personnel changes, graduation rates, and licensing examination rates, and the payment of a fee. This administrative regulation establishes the definitions of supervision and qualifying supervisors and establishes the process for issuing and renewing the Certificate of Good Standing to a program of massage therapy education.

Section 1. Definitions. (1) "Adjunctive course" means a course in a program of education that enhances the career of a massage therapist but is not massage theory, technique, or practice.

(2) "Clinic" or "clinical" means a setting in which students are provided with on-site supervision and training in the practice of massage therapy.

(3) "Clinical coordinator" means the instructor of a massage therapy course in which students are assigned to perform massage therapy sessions on non-students, on or off-campus, and who is responsible for assigning the student to a clinical setting, supervising student performance through regular consultation with the student, and evaluating student achievement of clinical course objectives.

(4) "Externship" means a course offered by an approved program that:

(a) Has a syllabus that describes objectives and evaluations; and

(b) Is over and above the six hundred (600) supervised curriculum hours required for licensure.

(5) "Other licensed healthcare professional" means a practitioner as established in KRS 309.352(9)(a) through (c), (e), and (f) who may supervise a massage therapy student in a business.

(6) "Supervision" means the process of verifying attendance, assigning work, consulting with the student, evaluating student performance, and being available for emergency assistance.

Section 2. (1) To apply for a Certificate of Good Standing, a[A] program of massage therapy instruction shall file a completed, signed, and dated Certificate of Good Standing for a Massage Therapy Training Program Initial Application Form and required documentation with the board, meeting the requirements established in KRS 309.363(1)[, (a), (b), and (c)], and pay the fee set forth in 201 KAR 42:020 Section 2(10). Documentation shall include:

(a) A copy of the current license to operate issued by the Kentucky Commission for Proprietary Education, the Council on Postsecondary Education, or their equivalent in the state in which the school is conducting classes;

(b) A curriculum statement as described in KRS 309.363(1)(b)[1, 2, 3, 4, and 5] showing clock hours for each of the required subjects;

(c) A listing of instructional staff and their qualifications, as described in KRS 309.363(1)(c)1., 2., and 3. including:

1. Documentation of current Kentucky licensure of massage instructors; and

2. A resume, curriculum vitae, or PE-11 form, which is incorporated by reference in 791 KAR 1:010, for all instructors showing the specific qualifications for teaching an adjunctive or science course;

(d) A description of the policies and procedures in place for collecting and analyzing data about the quality and effectiveness of educational programs including student progress, completion, and licensure;

(e) A copy of the program or school catalogue;

(f) Documentation of accreditations held by the program or school offering the program; and

(g) A copy of a student contract agreeing not to accept compensation for massage therapy services provided prior to licensure by the board.

(2) A school may be presumed to have met the qualifications in subsections (1)(b) and (c) of this section if it holds a current designation of "Approved School" from the National Certification Board of Therapeutic Massage and Bodywork or has the designation of "accredited" or "COMTA-endorsed curriculum" from the Council for Massage Therapy Accreditation. The designation must have been current for the time the Certificate of Good Standing is requested.

(3) ~~After a preliminary determination is made, [by the board after an initial review,] an applicant that has been [preliminarily] denied shall be entitled to a hearing on the denial in accordance with KRS Chapter 13B if the applicant notifies the board in writing [by certified mail] within thirty (30) days that it desires [elects to take advantage of that opportunity for] a hearing.~~

Section 3. (1)(a) A Certificate of Good Standing may be renewed upon submission of the Renewal Application for a Certificate of Good Standing of a Massage Therapy Training Program~~Renewal Short Form or the Certificate of Good Standing for a Massage Therapy Training Program Renewal Application Long Form~~ with the information required by this administrative regulation to the board and payment of the fee set forth in 201 KAR 42:020 Section 2(11), on or before the anniversary date of issue of the certificate.

(b) The Renewal Application~~Submission of the Certificate of Good Standing for a Massage Therapy Training Program Renewal Application Long Form~~ shall include:

1. The current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided;

2. The name and contact information of the owner;

3. Documentation of the items required in Section 2 of this administrative regulation if these have changed since the program's initial application or last renewal;

4. A statement with supporting statistics to show student completion, examination pass rates, licensure rates, and placement rates; ~~and~~

5. A statement with supporting documentation showing proof that at least seventy (70) percent of the graduates of the program who have taken the MBLEx or other board approved examinations over the twelve (12) months prior to application have received a passing score. This statistical report from the examination company shall be computed for the twelve (12) months, which ends thirty (30) days prior to the certificate anniversary date. Failure to supply

proof of meeting this standard shall be grounds for denial of a program's request for certification of good standing;[~~;~~] and

(c) [~~Submission of the Application for a Certificate of Good Standing of a Massage Therapy Training Program Renewal Short Form shall include d]~~Documentation of changes to any of the following items, if these have changed since the program's initial application or last renewal:

1. The contact information for the school;
2. The instructional staff;
3. The qualifications of an instructor;
4. The curriculum;
5. The massage therapy programs offered; or
6. The program's accreditation.

(d) [~~Each Short Form shall include u]~~Updated information on student completion, examination pass rates, licensure rates, and placement rates.

(e) Submission of documentation [~~with the Short Form]~~may include:

1. The current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided;
2. The current listing of instructional staff and their qualifications as described in KRS 309.363(1)(c)[~~4, 2, and 3~~], with attached documentation of qualifications and Kentucky licensure of new instructors;
3. A current curriculum statement as described in KRS 309.363(1)(b)[~~1, 2, 3, 4, and 5~~];
4. A curriculum statement for new programs of massage therapy added to the school's original offering, such as an associate's degree program, if the new program may be used to meet initial qualifications for licensure;
5. A statement with supporting statistics to show student completion, examination pass rates, licensure rates, and placement rates;
6. Documentation of accreditation reviews and renewals, if held; and
7. A statement with supporting documentation showing proof that at least seventy (70) percent of the graduates of the program who have taken the MBLEx or other board approved examinations over the twelve (12) months prior to application have received a passing score. Failure to supply proof of meeting this standard shall be grounds for denial of a program's request for certification of good standing.

(2) After a [~~preliminary~~]determination is made by the board after an initial review, an applicant seeking renewal that has been[~~preliminarily~~] denied shall be entitled to a hearing on the denial in accordance with KRS Chapter 13B if the applicant notifies the board in writing by certified mail within thirty (30) days that it elects to take advantage of that opportunity for a hearing.

Section 4. Notifications to Students of Changes in Status. (1) A program of massage therapy instruction shall notify current students in writing of any changes in status of its Certificate of Good Standing from the Commonwealth of Kentucky within thirty (30) days of that change in status. The notice shall include an explanation of the specific actions taken to remedy the problem.

(2) The program of massage therapy instruction shall provide proof to the Board of this notification within ten (10) days of the notification.

Section 5. Externships and Clinicals. (1) A student completing an externship or clinical experience shall not receive compensation.

(2) Massage schools or businesses that provide any type of student massage shall conspicuously include the respective words "student massage" in all promotional materials, and shall

conspicuously display a written notice in the waiting room or treatment area that services are being provided by a student.

(3) Clinical courses awarding credit hours toward the 600 hours required for licensure shall be supervised by a licensed massage therapist with at least three (3) years of experience in the practice of massage therapy and who is available for on-site consultation.

(a) Massage sessions offered as part of a student clinic shall be evaluated by the instructor, and applicable goals for improvement in areas such as customer service, technique, body mechanics, and draping shall be established according to the needs of the student.

(b) Student massage clinics shall be supervised by a massage therapy instructor in the clinic.

(c) Student clinic client records shall be maintained at the school and shall meet the record keeping requirement established in 201 KAR 42:060, Section 2(1)(f)(d) and the Standards for Documentation established in 201 KAR 42:060, Section 3. Record of payment shall be made available to the client upon request.

(4) The instructor of the externship course shall provide:

(a) Clear, written learning objectives to students and their site supervisors;

(b) Planned opportunities to discuss the externship experience at regular intervals with the student, and with the site supervisor; and

(c) A mechanism for evaluating student performance in the externship experience, presented to the student and the site supervisor at the beginning of the course.

(5) A program offering an externship course shall have a written agreement signed by the institution's representative or program director and the externship site personnel that clearly defines the responsibilities of the onsite supervisor, the clinical coordinator, and the student. An externship course shall be limited to no more than twenty (20) percent of the total program hours. The externship course, if offered, shall be completed after the primary 600 supervised curriculum hours required by KRS 309.358(1)(f)(4).

(6) A program offering an externship course shall have liability insurance to cover student activities within the course.

(7) Externship sites shall have a licensed massage therapist or other licensed healthcare professional onsite to be available for emergencies or consultation.

(a) Externs may accrue hours for reception, documentation, or business-related activities other than hands-on massage services while the site supervisor is off-premises.

(b) A student session at an externship site may occur with the site supervisor available by phone if the client of the session is on the staff of the externship site or is another extern, and a member of the professional staff is on premises for emergency assistance.

(8) Externship client records shall be maintained at the externship site and shall meet the record keeping requirement established in 201 KAR 42:060, Section 2(1)(d) and the Standards for Documentation established in 201 KAR 42:060, Section 3. Record of payment shall be available to the client upon request.

Section 6. (1) A program of massage therapy instruction which fails to uphold the standards set in KRS 309.363 shall notify the Board within ten (10) days of the lapse. The failure to uphold the standards, and the failure to notify the Board in a timely manner, may result in a fine and probation as determined by the Board to allow time to re-attain the standard. Graduates from the program during the period of non-compliance and the probationary period may be considered for licensure. If there is a failure to meet standards and the program's Certificate of Good Standing is revoked, the Board shall not consider graduates of the program to have met the educational requirements for licensure after the revocation.

(2) The loss of a qualified instructor shall be remedied within thirty (30) days. The use of an unqualified instructor to substitute in the program may result in revocation of the Certificate of Good Standing and a fine of fifty (50) dollars.

(3) Proof of the exam rate from the administering agency for twelve (12) months ending thirty (30) days prior to the renewal date shall be submitted with the renewal application.

(a) The first incidence of failure to maintain the required license exam pass rate for this twelve (12) month period shall result in a probationary period during which graduates of the program may still be considered by the Board for licensure.

(b) A second failure within a five (5) year period may result in revocation of the Certificate of Good Standing, and graduates of the program may no longer be considered for licensure by the Board unless they graduate from another approved program of massage therapy instruction.

(c) The Board may set a fine per violation of failure to maintain the required exam pass rate.

(4) When filing an Application for Renewal of a Certificate of Good Standing while on probation, the school shall explain in writing specific actions taken to remedy the problem.

Section 7. Sale or Other Change in Ownership. In the event the school is sold or is otherwise transferred, the school shall notify the board within thirty (30) days of transfer of the new ownership, and provide updated information regarding the ownership structure, contact information, and any staff or curriculum changes.

Section 8. [~~Section 5.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certificate of Good Standing for a Massage Therapy Training Program Initial Application Form", November 2021 [~~September 2015~~]; and

(b) ["Application for a Certificate of Good Standing of a Massage Therapy Training Program Renewal Short Form", September 2015; and

(~~c~~) "Certificate of Good Standing for a Massage Therapy Training Program Renewal Application [~~Long Form~~]", November 2021 [~~September 2015~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, Kentucky 40601 [~~Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40604~~], Monday through Friday, 8:00 a.m. to 4:30 p.m. The material is also available on the board's Web site at <https://bmt.ky.gov/>.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 1:00 p.m. EST on January 31, 2022, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:

<https://us06web.zoom.us/j/89285321804?pwd=aVQxcVpzL3BwN3N4enI6M3Mxd2hvdz09>

Password: 834891

Or Telephone:

Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 213515

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=213515>

Or an H.323/SIP room system:

H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 892 8532 1804
Password: 834891

SIP: 89285321804@zoomcrc.com
Password: 834891

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date (January 24), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. EST on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for issuing and renewing the Certificate of Good Standing to a program of massage therapy education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify the requirements to obtain and renew a certificate of good standing for massage therapy instruction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by setting forth the requirements to obtain and renew a certificate of good standing for massage therapy instruction.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the requirements to obtain and renew a certificate of good standing for massage therapy instruction.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 27 programs licensed by the Board, and an unknown number of programs not currently licensed by the Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The proposed administrative regulation simplifies and clarifies the requirements of obtaining a certificate of good standing from a program of massage therapy instruction.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The proposed administrative regulation simplifies and clarifies the requirements of obtaining a certificate of good standing from a program of massage therapy instruction. Filers will have to pay the fee set forth in 201 KAR 42:020 Section 2(10) and (11), and file the required application or renewal form as applicable with the documentation and information as required by this proposed administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assist programs of massage therapy instruction in understanding the requirements to obtain a certificate of good standing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Unknown. Filers will have to pay the fee set forth in 201 KAR 42:020 Section 2(10) and (11), and file the required application or renewal form as applicable with the documentation and information as required by this proposed administrative regulation.

(b) On a continuing basis: Unknown. Filers will have to pay the fee set forth in 201 KAR 42:020 Section 2(10) and (11), and file the required application or renewal form as applicable with the documentation and information as required by this proposed administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: See the proposed amendments to 201 KAR 42:020 regarding fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Massage Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1); KRS 309.355(3)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: